IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 20TH NOVEMBER 2006 / 29TH KARTHIKA 1928

MFA.No. 538 of 2002()

OPMV.1759/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, VADAKARA

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APPELLANT: 3RD RESPONDENT

THE ORIENTAL INSURANCE CO.LTD.,
CALICUT NOW REPRESENTED BY ITS ASSISTANT MANAGER,
REGIONAL OFFICE,METRO PALACE,KOCHI-18

BY ADV. SRI.MATHEWS JACOB

RESPONDENTS: PETITIONER

DINESHAN S/O.KUNHI KANNAN,MUTHATTIL
THAZHA HOUSE,PALLIKKARA P.O.,KOYILANDY,KOZHIKODE.

BY ADV. SRI.SUNNY MATHEW

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 20.11.2006, THE COURT ON 20/11/2006 DELIVERED THE FOLLOWING:

K.HEMA, J.

M.F.A.NO. 538 OF 2002

Dated this the 20th day of November, 2006

JUDGMENT

The Insurance Company is the appellant. An award was passed by the Motor Accidents Claims Tribunal ('the Tribunal', for short) allowing the claimant to recover Rs.75,000/- with 9% interest thereon from the date of death till the realisation with cost of Rs.1,500/- from the owner, driver and the insurer of the vehicle etc. The said award is under challenge.

The claimant was allegedly involved in a motor accident on 2.5.1993 at about 11 a.m while he was pushing a bicycle on a public road. A tempo trax driven in a rash and negligent manner hit against the claimant. He fell down, the vehicle run over his hand and the bicycle. Serious injuries were caused on the claimant and the bicycle was damaged. The claimant filed a petition claiming Rs.75,000/- as compensation with interest from the owner, driver and the Insurance Company. The Tribunal found that he is entitled to get Rs.1,03,520/- as compensation, but limited the amount to Rs.75,000/- which alone was claimed.

Learned counsel for the Insurance Company submitted that the challenge is on the quantum of compensation awarded under various heads to the claimant. According to him, the injuries sustained are all minor, being abrasions and therefore the amount awarded is excessive. But he also fairly conceded that no petition was filed by him before the Tribunal under Section 170 of the Motor Vehicles Act seeking permission to contest the

claim on other grounds. Therefore, in the absence of permission being granted to the Insurance Company, the Insurance Company is not be entitled to challenge the claim on any grounds including the quantum of compensation awarded. Hence I am precluded from going into the contentions raised regarding the quantum of compensation.

It is to be noted that the Tribunal has awarded the compensation particularly by placing reliance upon a disability certificate, Exhibit P4 issued by the Assistant Professor of Surgery attached to the Medical College, Calicut who was also examined as PW1 in the case. Though the injuries are minor in appearance, being abrasions, it is clear from the award and records that it had led to certain complications including loss of sensation etc. I am not, therefore, inclined to interfere with the award passed.

The appeal is dismissed.

K.HEMA, JUDGE

vgs.

K.HEMA, J.

M.F.A.NO.538 OF 2002

J U D G M E N T

20.11.2006